

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.D
Mtg. Date September 2, 2014
Dept. Finance

Item Title: Agreement for Business License Data Analysis Services

Staff Contact: Cathy Till, Finance Director

Recommendation:

Adopt a resolution (**Attachment B**) approving an agreement with Municipal Auditing Services, LLC and authorizing Municipal Auditing Services, LLC to access data from the State Board of Equalization.]

Item Summary:

In order to help identify businesses that are operating without a business license, the City proposes hiring Municipal Auditing Services, LLC to identify unlicensed businesses. Municipal Auditing Services uses various databases (from the State Board of Equalization, Franchise Tax Board and other similar databases) to identify businesses that may be operating without a business license. The staff report (**Attachment A**) provides background information about Municipal Auditing Services, LLC and a proposed public education and business amnesty program. Staff presents a resolution for City Council consideration which would approve an agreement with Municipal Auditing Services, LLC and allow them access to all applicable databases in order to discover businesses operating without a license in the City.

Fiscal Impact:

Unknown at the time. Municipal Auditing Services LLC charges 40 percent of the amount of business license fees collected under the terms of the contract. This would be a one-time charge and would include unreported business licenses for the last four years (the current year plus the prior three).

Environmental Review:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|--|---|
| <input type="checkbox"/> None | <input checked="" type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.D

Mtg. Date September 2, 2014

Item Title: Agreement for Business License Data Analysis Services

Staff Contact: Cathy Till, Finance Director

Discussion:

The Business License Tax Ordinance was established in 1978 and is a general fund tax on businesses for the ability to conduct business within the City. Some businesses operate without obtaining a business license. At times, the business owners are not aware of the requirement to obtain a business license. Others have either put off obtaining a business license or have simply opted not to pay for a business license. In order to help to identify those businesses that are operating without a business license, staff proposes entering into a contract with Municipal Auditing Services, LLC (MAS) to identify these businesses.

The City issues over 1,700 business licenses per year, generating about \$85,000 in annual General Fund revenue. The business license tax is comprised of several components, and the rate depends on type of business, number of employees, as well as other factors. On a limited basis, staff does discover some unlicensed business, mainly through word of mouth and information provided by other staff.

MAS provides a full service “business tax compliance/enforcement program.” Kevin Weigant, President of MAS, has over 20 years of municipal auditing experience. MAS collects the amounts due and submits amounts collected and supporting documentation to the City for processing. MAS will receive a one-time payment of 40 percent of the actual tax recovered. The City will receive 100 percent of all future tax collections, thereby permanently increasing the City’s business license tax base.

MAS will provide a complete audit file to the City for businesses that do not comply. The City’s Finance Department and the City Attorney will handle noncompliant taxpayer protests, court cases and collections.

Staff recommends that the “business tax compliance/enforcement program” begin with a well-publicized thirty-day amnesty program. Upon completion of the amnesty program, the City will begin a three-year business license tax audit. All businesses in Lemon Grove will be contacted over the three year period. During the thirty day amnesty period the City will accept new licenses or accept new information concerning the calculation of the business license tax without penalties. After the amnesty period ends and during the three-year audit program, unlicensed businesses or deficient taxpayers will be subject to three years back tax collections and penalties to a maximum of 40 percent of the tax due.]

Conclusion:

Staff recommends that the City Council adopt a resolution (**Attachment B**) approving an agreement with Municipal Auditing Services, LLC and authorizing Municipal Auditing Services, LLC to access data from the State Board of Equalization.

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RESOLUTION NO. 2014-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA DESIGNATING MUNICIPAL AUDITING SERVICES, LLC AS AN AUTHORIZED CITY REPRESENTATIVE TO EXAMINE SALES AND USE RECORDS

WHEREAS, the City Council has adopted a business license tax on persons doing business in the City of Lemon Grove; and

WHEREAS, pursuant to California law, the City of Lemon Grove has adopted a sales and use tax ordinance that imposes a tax and provides that it can be administered and collected by the State Board of Equalization in administering and collecting California State Sales and Use Taxes; and

WHEREAS, pursuant to Revenue and Taxation Code 7056(b), the City of Lemon Grove may designate by resolution any officer, employee, or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City; and

WHEREAS, the City of Lemon Grove has entered into a non-exclusive agreement for revenue audits and information services with the firm of MUNICIPAL AUDITING SERVICES, LLC as an authorized consultant to examine such sales tax allocation records maintained by the Board on behalf of the City of Lemon Grove; and

WHEREAS, all legal prerequisites prior to the adoption of this Resolution have occurred. |

NOW, THEREFORE, BE IT RESOLVED:

1. Approves a Consulting Contract (**Exhibit 1**) with MUNICIPAL AUDITING SERVICES, LLC and authorizes the City Manager to execute said Consulting Contract
2. The City Council of the City of Lemon Grove hereby certifies to the State Board of Equalization that MUNICIPAL AUDITING SERVICES, LLC is a designated representative of the City of Lemon Grove for purposes of examining all of the sales and use tax records collected by the Board on behalf of the City of Lemon Grove in order to audit and review the business license returns and compliance for the City of Lemon Grove; and
3. Pursuant to California Revenue & Taxation Code 7056(b), the City Council hereby certifies that MUNICIPAL AUDITING SERVICES, LLC (hereinafter "Consultant") meets all of the following conditions:
 - (a) Consultant has an existing contract with the City to examine sales and use tax records of sales and use taxes collected for the City; and
 - (b) Consultant is required by that contract to only disclose information contained in, or derived from, those sales and use tax records to an officer or employee of the City who is authorized by resolution to examine the information; and
 - (c) Consultant is prohibited by the contract with the City from performing consulting service for a retailer during the term of the contract; and
 - (d) Consultant is prohibited by the contract from retaining the information contained in, or derived from, those sales and use tax allocation records after the contract has expired.

EXHIBIT 1

City of LEMON GROVE

Consultant Agreement September 3, 2014

THIS AGREEMENT is entered into in the State of California by and between the City of LEMON GROVE, hereinafter called "City" and Municipal Auditing Services LLC, hereinafter called "Consultant". It is hereby agreed as follows:

WITNESSETH

WHEREAS, the City desires to contract for auditing/accounting services, hereinafter referred to as "Services or Work Product"; and

WHEREAS, CONSULTANT has the professional ability, means and technical skills to accomplish the services and provide the work product required by this agreement; and

WHEREAS, CONSULTANT desires to provide the services to accomplish the terms of this agreement; and

WHEREAS, the CITY and CONSULTANT desire to set forth, in writing, the obligations and responsibilities of each party relating to providing the services.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will accrue to the parties hereto in carrying out the terms of this Agreement, and for other good and valuable consideration on the receipt and sufficiency of which is hereby acknowledged, it is mutually understood and agreed as follows:

1. Retention of Consultant:

City hereby retains Consultant in accordance with the terms of this Agreement to do and perform field auditing, accounting, support and consulting services as may be required by the City.

2. Personnel:

All of the services will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified, and shall be authorized and permitted under State and local laws to perform such services, and shall be acceptable to City.

Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees of City.

Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

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3. Performance Specification and Products:

Consultant shall perform the tasks and deliver the products and services as may be required by City, and Consultant shall also provide such additional accounting and financial services as are from time to time requested by the City.

4. Compensation and Payment:

Consultant agrees to provide the work product and services at a rate of 40% of discovery/deficiency/collection identification (tax, penalty, interest, costs, and fees (if allowed by law) for all applicable years. In no event will Consultant be entitled to "forward" year billing of accounts. In the event that the City waives or forgives any amount, the Consultant is entitled to compensation based upon the original amount. In the event the City stops or fails to authorize a given project, or allows to be conducted those same or similar projects by staff or other service providers, MAS is entitled to compensation as herein agreed.

5. Method of Payment:

Consultant shall provide an invoice with each completed package transmitted to the City. Payment shall be for the work described on the invoice and satisfactorily completed. Invoices shall include case identification and amount of correction and Consultant payment amount. City shall pay invoices within thirty (30) days from receipt of such invoice; provided, however, that if Consultant submits an invoice which is incorrect, incomplete or not in accord with the provisions of the Agreement, City shall not be obligated to process any payment to Consultant until thirty (30) days after City's receipt of a correct and complying invoice submitted by Consultant. City shall process undisputed portions for payment as otherwise set forth herein.

6. City Management:

The City's Finance Director, or a designee or successor, shall represent the City in all matters pertaining to the administration of this Agreement, including without limitation, coordination of all necessary meetings, conferences, determination of the amount and level of work to be performed, and review and approval of all work product submitted by the Consultant.

7. No Benefit to Arise to Local Employees:

No member, officer, or employee of the City, or its designees or agents, and no public official who exercises authority over responsibilities with respect to the services provided pursuant to this Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the services provided under this agreement.

8. The Consultant as an Independent Contractor:

Consultant is, and at all times during the term of this Agreement shall be an independent contractor. Consultant specifically recognizes and acknowledges its status as an independent contractor and not as an employee of the City. Consultant's personnel shall be employees of Consultant and not employees of the City. Neither Consultant nor any of its officers, employees or agents shall at any time or in any manner represent that any of them is an employee of the City. Consultant shall pay all salaries and wages, Workers Compensation insurance, employer's social security taxes when applicable, and unemployment insurance and similar taxes relating to employees and shall be responsible for all withholding taxes. Consultant shall comply with all Federal and State regulations relating to the employer/employee relationship including but not limited to minimum wage, non-discrimination, equal opportunity, Workers Compensation, hazardous/unsanitary or

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dangerous surroundings, the Fair Labor Standards Act, 29 U.S.C. 201 et seq. And the Immigration Reform and Control Act of 1986 8 U.S.C. 245(a).

9. Ownership of Materials and Documents:

All work product and material prepared by Consultant for City shall be the property of City once payment has been made, and Consultant shall deliver such materials to City according to the terms of this agreement. However, Consultant shall have the right to make duplicate copies of such materials and documents for its files or other purposes as may be authorized by the City. Consultant shall be held free and clear of any liability resulting from City's use of materials and documents for work unrelated to this Agreement.

10. Release of Information:

All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by the Consultant without the City's prior written authorization excepting that information which is public record and subject to disclosure pursuant to the California Public Records Act, Government Code Section 6250 et seq. Consultant, its officers, employees, agents, or sub contractors, shall not voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement, or cooperate in any way with a party who may be adverse to the City or whom Consultant reasonably should know may be adverse to the City in any subsequent litigation. Response to a court order shall not be considered "voluntary" provided Consultant gives City prior written/verbal notice of such court order. Consultant shall incur no liability under this Agreement for materials submitted by it to the City, which are later released by City, its officers, employees, or agents. Consultant shall also incur no liability for statements made by it at any public meeting conducted by City, or for any document released by it for which prior written City authorization was obtained.

If Consultant or any of its officers, employees, consultants, or sub contractors does voluntarily provide information in violation of this Agreement, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant's conduct, including attorney's fees.

Consultant will promptly notify City should Consultant, its officers, employees, agents or sub contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request or court order from any party regarding this Agreement and the work performed thereunder. City retains the right, and obligation, to represent Consultant and/or to be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

City warrants that Consultant will have fully met the requirements of this provision by obtaining City's written approval prior to providing documents, testimony, or declarations; consulting with City before responding to subpoena or court order; in the case of depositions upon providing notice to City of same; or providing City the opportunity to review discovery response prior to submission. For purposes of this section, a written authorization from City shall include a "faxed" letter.

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11. Conflict of Interest:

Consultant covenants that neither they nor any officer or principal of their firm have any interest in, or shall they acquire any interest, directly or indirectly which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or sub contractor. Consultant further covenants that Consultant has not contracted with nor is performing any services directly or indirectly with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City and further covenants and agrees that Consultant and/or its subcontractors shall provide no service or enter into any agreement or agreements with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City prior to the completion of the work under this Agreement. Consultant further warrants its compliance with the Political Reform Act (Government Code Section 81000 et seq.) that apply to Consultant as the result of Consultant's performance of the services pursuant to the terms of this Agreement.

12. Indemnification:

Consultant agrees to indemnify, protect, and hold harmless the City and its officers, employees, and volunteers, against any and all claims or actions arising from Consultant's acts, errors, or omissions in performing services pursuant to this Agreement and for any costs or expenses incurred by City on account of any claim therefore, including attorney's fees.

The City agrees to indemnify, protect, and hold harmless and defend the Consultant, and its officers, and employees, against any and all claims or actions arising from anything other than the Consultants errors or omissions.

13. Insurance:

Consultant shall secure and maintain throughout the term of this Agreement the following types of insurance issued by companies which are admitted and authorized to do business in California as insurance carriers, with limits as shown:

Workers Compensation: A program of Workers' Compensation insurance or state approved Self-Insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability covering all persons providing services on behalf of the Consultant and all risks to such persons under this agreement.

Comprehensive General and Automobile Liability Insurance: This coverage shall include contractual coverage and automobile liability coverage for owned hired and non-owned vehicles. The policy shall have per occurrence limits for bodily injury and property damage of not less than one million (1,000,000) and shall also have professional errors and omissions coverage in the amount of one million dollars (\$1,000,000). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work or services performed under this agreement or the general aggregate limit shall be twice the required occurrence limit. Said insurance coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001) and Insurance Services Office Form Number CA 0001 (Ed. 1/87) covering Automobile Liability Code 1 (any auto).

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All insurance policies required above are to be primary and non-contributory with any insurance of self-insurance programs carried or administered by City.

14. Notification:

All notices and written communications sent to City under the Agreement shall be sent to the following address, unless authorized to be sent elsewhere by City:

Cathy Till
City of Lemon Grove
3232 Main Street
Lemon Grove CA 91945

All such being sent to Consultant shall be sent to:

Mr. Kevin L. Weigant
Municipal Auditing Services
P.O. Box 3465
Pinedale CA 93650-3465
559-277-5990

15. Effective Date:

This agreement shall become effective on the date of signature. The contract period shall start upon the Consultant's first generated letters, and shall continue uninterrupted. In the event that the Consultant's operations are interrupted (for any reason), the period of interruption shall be added to the end of the contract period.

16. Entire Agreement:

This agreement is the complete, final, entire agreement, and exclusive expression of the agreement between the parties hereto and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this agreement acknowledges that no representations by any party which are not embodied herein and that no other agreement, statement, or promise not contained in this agreement shall be valid and binding.

17. Assignment or Substitution:

City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant by this agreement. In recognition of that interest, neither any complete or partial assignment of this agreement may be made by Consultant nor changed, substituted for, deleted, or added to without the prior written consent of City. Any attempted assignment or substitution shall be ineffective, null and void.

18. Modification of Agreement:

The terms are subject to modification by mutual agreement between City and Consultant which such changes shall be incorporated by written amendments to this agreement. The parties agree that the requirements for prior written changes, amendments, or modifications to this agreement may not be waived and any attempted waiver shall be void.

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19. Savings Clause:

If any provision of this agreement is found to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

20. Term of Agreement: Termination:

The terms of this agreement shall be three (3) years with two (2) two year automatic extensions. The contract may be terminated by either party on 30 days written notice to the other. In the event of an early termination, the Consultant is entitled to complete all work in progress, but is unable to initial any new case work. City may elect to compensate Consultant based upon all work in process.

21. Authority to Execute:

The person or persons executing this agreement on behalf of Consultant warrants and represents that he has the authority to execute this agreement on behalf of his business entity and warrants and represents that he has the authority to bind Consultant to the performance of its obligations hereunder.

22. Unauthorized Aliens:

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. & 1101, et seq), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein.

23. Entire Agreement:

This Agreement is the complete, final, entire and exclusive expression of the Agreement between the parties hereto and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to the Agreement acknowledges that no representations by any party which are not embodied herein and that no other agreement, statement, or promise not contained in the Agreement shall be valid and binding.

24. No Presumption Re: Drafter:

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and the Agreement reflects their mutual agreement regarding the same. No presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

25. Governing Law:

The City and the Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

26. California State Board of Equalization Compliance:

The City and the Consultant understand and agree that both are in compliance with the California State Board of Equalization Section 7056 and further acknowledge compliance with the following items:

1. Consultant has an existing contract with the City of Lemon Grove to examine sales and use tax records.

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2. Consultant is required by this contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of the City of Lemon Grove who is authorized by the resolution to examine the information.
3. Consultant is prohibited by this contract from performing consulting services for a retailer during the term of the contract.
4. Consultant is prohibited by this contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after that contract has expired.

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This Agreement is executed by the parties in LEMON GROVE, California.

City of LEMON GROVE

Name

Date

Consultant:

Municipal Auditing Services LLC

Kevin L. Weigant

Date

Chief Operating Officer